

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

proof of service

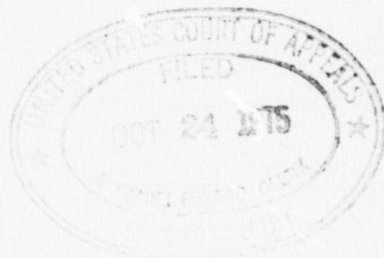
75-1225

B
PMS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA, :
Appellee, :
-against- : Docket No. 75-1225
THOMAS DUVALL and :
HENRY JONES, :
Appellants. :
-----x

APPELLANTS' JOINT APPENDIX



JESSE BERMAN
Attorney for Appellant Duvall
351 Broadway
New York, New York 10013
(212) 431-4600

O.T. WELLS
Attorney for Appellant Jones
377 Broadway
New York, New York 10013
(212) CA 6-3000

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

| | |
|----------------------------------|---|
| INDICTMENT | A |
| DOCKET SHEET | B |
| COURT'S CHARGE TO THE JURY | C |

INDICTMENT
(74 Cr. 600)

TSK:bbj
74-1781
7-45

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

HENRY JONES, THOMAS DUVALL
and RALEIGH MCCOY PORTER,

Defendants.

INDICTMENT

74 Cr. 600

COUNT ONE

The Grand Jury charges:

1. From on or about the 6th day of June, 1972, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, HENRY JONES, THOMAS DUVALL and RALEIGH MCCOY PORTER, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 495 and 1703.

2. It was a part of said conspiracy that the defendants, HENRY JONES, THOMAS DUVALL and RALEIGH MCCOY PORTER, would buy, receive, conceal and unlawfully have in their possession the contents of certain letters which had been stolen, taken, embezzled and abstracted from and out of the mail, a post office and station thereof, a letter box, a mail receptacle, and a mail route and other authorized depository for mail matter, and from a letter and mail carrier, to wit: United States Treasury checks for disability payments, tax refunds, Veteran's Compensation and Social Security benefits.

TSK:bmj
74-1741
D-45

3. It was further a part of said conspiracy that the defendants, HENRY JONES, THOMAS DUVALL and RALPH McCOY PORTER, with intent to defraud the United States, would utter and publish as true and cause to be uttered and published as true, false, forged and counterfeited writings, namely, checks, being genuine obligations of the United States, knowing the same to be false, forged and counterfeited, to wit: defendants would deposit such checks in bank accounts and offer such checks to suppliers and merchants in payment of charges for goods and supplies for a business and businesses, known and unknown, owned and operated by defendants and for cash refunds of the amount by which the face amount of such checks exceeded the charges and part payments offered for such goods and supplies.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by the defendants in the Southern District of New York and elsewhere:

1. On or about June 6, 1972, HENRY JONES, the defendant, offered a stolen and forged United States Treasury check to a supplier and merchant in part payment for goods and supplies and received a cash refund of the amount by which the face amount of the check exceeded the payment offered.

2. On or about September 2, 1972, THOMAS DUVAL, the defendant, offered a stolen and forged United States Treasury check to a supplier and merchant in payment for goods and supplies.

3. On or about October 1, 1972, RALEIGH MCCOY PORTER, the defendant, offered a forged United States Treasury check to a supplier and merchant in payment for goods and supplies.

TBX:bmj
74-1741
D-45

4. On or about May 21, 1973, THOMAS DUVALL, the defendant, deposited stolen and forged United States Treasury checks in a Chemical Bank savings account.

5. On or about June 2, 1973, THOMAS DUVALL, and RALEIGH McCOY PORTER, the defendants, offered a stolen and forged United States Treasury check to a supplier and merchant in payment for goods and supplies.

6. On or about March 22, 1974, RALEIGH McCOY PORTER, the defendant, offered a stolen and forged United States Treasury check to a supplier and merchant.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 6th day of June, 1972, in the Southern District of New York, HENRY JONES, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to be uttered and published as true, a false, forged and counterfeited writing, namely, the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States, of the following tenor:

| <u>DATE</u> | <u>PAYEE</u> | <u>AMOUNT</u> | <u>CHECK NO.</u> | <u>SYMBOL</u> |
|-------------|--------------------------|---------------|------------------|---------------|
| 6/6/72 | Benjamin V. Wacholder | \$317.90 | 89,404,518 | 3043 |

(Title 18, United States Code, Section 495.)

100-111
71-1741
3-45

COUNTS THREE THROUGH TEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, THOMAS DWALL, the defendant, did unlawfully, wilfully and knowingly have in his possession the contents of certain letters addressed to individuals hereinafter set forth, which had been stolen, taken, embezzled and abstracted from and out of the mail, a post office and station thereof, a letter box, a mail receptacle, and a mail route and other authorized depository for mail matter, and from a letter and mail carrier, knowing the same to have been stolen, taken, embezzled and abstracted.

| <u>COUNT</u> | <u>DATE</u> | <u>ADDRESSEE</u> | <u>ADDRESS</u> |
|--------------|-------------|----------------------------|--|
| 3 | 3/2/72 | Louis Gluck | 55 E. 175 St., Apt. 34A, Bronx, N.Y. |
| 4 | 4/1/73 | James E. Wilson | 2000 Davidson Ave., Bronx, N.Y. |
| 5 | 5/18/73 | Coreen Roman | 1975 Grand Ave., Apt. 1E, Bronx, N.Y. |
| 6 | 5/18/73 | Anna Weidener | 2249 Morris Ave., Bronx, N.Y. |
| 7 | 5/18/73 | Merita Gordon | 155 E. 132nd St., Bronx, N.Y. |
| 8 | 5/17/74 | Gregory T. Gustavson | 1600 University Ave., Apt. 57 Bronx, N.Y. |
| 9 | 5/17/74 | Wilton & Mary Gustavson | 1600 University Ave., Bronx, N.Y. |
| 10 | 5/17/74 | Petra Vazquez | 1730 Andrews Ave., Apt. 2K, Bronx, N.Y. |

(Title 18, United States Code, Section 1709.)

COUNTS ELEVEN THROUGH EIGHTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, THOMAS DEWALL, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to

78-1714
D-45

be uttered and published as true, false, forged and counterfeited writings, namely, the endorsements of the payee on checks, knowing the same to be false, forged and counterfeited, the checks being genuine obligations of the United States and of the following tenor:

| <u>COUNT</u> | <u>DATE</u> | <u>PAYEE</u> | <u>AMOUNT</u> | <u>CHECK NO.</u> | <u>SYMBOL</u> |
|--------------|-------------|----------------------------|---------------|------------------|---------------|
| 11 | 9/2/72 | Louis Gluck | \$133.00 | 77,799,570 | 3042 |
| 12 | 4/1/73 | James E. Wilson | 23.00 | 30,175,216 | 2203 |
| 13 | 5/13/73 | Coreen Ronan | \$296.23 | 36,133,945 | 3045 |
| 14 | 5/13/73 | Anna Weideger | 69.59 | 36,137,203 | 3045 |
| 15 | 5/13/73 | Merita Gordon | 114.94 | 36,144,367 | 3045 |
| 16 | 5/17/74 | Gregory T. Gustavson | 222.39 | 42,394,577 | 3047 |
| 17 | 5/17/74 | Milton & Mary Gustavson | 205.93 | 42,394,554 | 3047 |
| 18 | 5/17/74 | Petra Vazquez | 144.24 | 42,620,592 | 3047 |

(Title 18, United States Code, Section 495.)

COUNT NINETEEN

The Grand Jury further charges:

On or about the 1st day of October, 1972, in the Southern District of New York, RALPH MCCOY PORTER, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to be uttered and published as true, a false, forged and counterfeited writing, namely, the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States, and of the following tenor:

| <u>DATE</u> | <u>PAYEE</u> | <u>AMOUNT</u> | <u>CHECK NO.</u> | <u>SYMBOL</u> |
|-------------|----------------------|---------------|------------------|---------------|
| 10/1/72 | Robert L. Council | \$28.00 | 12,983,937 | 2203 |

(Title 18, United States Code, Section 495.)

COUNT TWENTY

The Grand Jury further charges:

On or about the 2nd day of June, 1973, in the Southern District of New York, THOM S. DUVAL and RALPH MCCOY PORTER, the defendants, did unlawfully, wilfully and knowingly have in their possession the contents of a certain letter addressed to Peter Lucenko, 77 E. 3rd St., Apt. 11, N.Y., N.Y., which had been stolen, taken, embezzled and abstracted from and out of the mail, a post office and station thereof, a letter box, a mail receptacle and a mail route and other authorized depository for mail matter, and from a letter and mail carrier, knowing the same to have been stolen, taken, embezzled and abstracted.

(Title 18, United States Code, Sections 1703 and 2.)

COUNT TWENTY-ONE

The Grand Jury further charges:

On or about the 2nd day of June, 1973, in the Southern District of New York, THOMAS DUVAL and RALEIGH MCCOY PORTER, the defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to be uttered and published as true, a false, forged and counterfeited writing, namely the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States and of the following tenor:

| <u>DATE</u> | <u>PAYEE</u> | <u>AMOUNT</u> | <u>CHECK NO.</u> | <u>SYMBOL</u> |
|-------------|---------------|---------------|------------------|---------------|
| 5/2/73 | Peter Ducenko | \$159.40 | 32,569,927 | 3045 |

(Title 18, United States Code, Sections 495 and 2.)

74-1114
D-43

COUNT TWENTY-TWO

The Grand Jury further charges:

On or about the 22nd day of March, 1973, in the Southern District of New York, RALEIGH MCCOY PORTER, the defendant, did unlawfully, wilfully and knowingly have in his possession the contents of a certain letter addressed to Robert and Lucille Menthall, 191 W. 163rd St., Bronx, N.Y., which had been stolen, taken, embezzled and abstracted from and out of the mail, a post office and station thereof, a letter box, a mail receptacle, and a mail route and other authorized depository for mail matter, and from a letter and mail carrier, knowing the same to have been stolen, taken, embezzled and abstracted.

(Title 18, United States Code, Section 1703.)

COUNT TWENTY-THREE

The Grand Jury further charges:

On or about the 22nd day of March, 1974, in the Southern District of New York, RALPH MCCOY PORTER, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to be uttered and published as true, a false, forged and counterfeited writing, namely, the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States, and of the following tenor:

| <u>DATE</u> | <u>PAYEE</u> | <u>AMOUNT</u> | <u>CHECK NO.</u> | <u>SYMBOL</u> |
|-------------|--------------------------------|---------------|------------------|---------------|
| 3/22/74 | Robert and Lucille Menthall | \$497.96 | 30,230,335 | 3047 |

(Title 18, United States Code, Section 495.)

FOREMAN

PAUL J. CURRAN
United States Attorney

DOCKET SHEET

JUDGE STEWART

74000 600

| TITLE OF CASE | ATTORNEYS |
|---|--|
| THE UNITED STATES | For U. S.: |
| vs. | Michael Q. Carey, AUSA. |
| HENRY JONES, a/k/a Gene Hannon, a/k/a Robert White, a/k/a Robert Scott-Cts. 1-3, 28-34 6-16-75 | 264-6438 |
| THOMAS DUFFALL, a/k/a Benjamin Young, a/k/a 6-16-75 James George-Cts. 1, 4-21, 24, 25, 28-34. | For Defendant: (Jones) C. I.A.: Benjamin Zelenmeyer, 110 E. 59th St., NYC. |
| WELSH McGOY PORTER- Cts. 1, 22-34. 5/2/75 | (see attached sheet for full listing) |

| ABSTRACT OF COSTS | AMOUNT | CASH RECEIVED AND DISBURSED | | | | | |
|--|--------|-----------------------------|------|----------|--|-----------|--|
| | | DATE | NAME | RECEIVED | | DISBURSED | |
| Marshall, | | | | | | | |
| Attorney, | | | | | | | |
| Clerk | | | | | | | |
| 18:371 Consp. to utter stolen Govt. checks.(Ct.1) | | | | | | | |
| 18:1708 Possess. of stolen mail.(Cts.2,4-12,22,24,26,28-34.) | | | | | | | |
| 8-495 Forgery of Govt. checks.(Cts.3,13-21,23,25,27.) | | | | | | | |
| (Thirty-Four Counts | | | | | | | |

| DATE | PROCEEDINGS |
|--------|--|
| -13-74 | Filed indictment. |
| -17-74 | Deft. Jones- Produced on a writ. (No atty. present) Court directs entry of not guilty plea. Bail fixed by Mag. continued \$5,000. cash. Deft. remanded in lieu of bail. Writ satisfied. |
| | Deft. Duvall- Produced on a writ. (atty. present) Pleads not guilty. Bail fixed by the Court at \$10,000. P.R.B. secured by \$1,000. cash. Deft. remanded in lieu of bail. Writ satisfied. |
| | Deft. Porter- Produced on a writ. (atty. present) Pleads not guilty. Bail continued as previously fixed by Mag. \$5,000. cash. Motions returnable in 10 days. Case assigned to Judge Stewart for all purposes. Writ satisfied. |
| | Knapp, J. |

| DATE | PROCEEDINGS | CLERK'S FEES | |
|---------|---|--------------|-----------|
| | | PLAINTIFF | DEFENDANT |
| 6-20-74 | DUVALL - Deft (atty present) Jones Application for bail, granted. Bail increased to \$5,000.00 Cash or surety. - STEWART, J. | | |
| 6-27-74 | JONES - Filed Deft. Financial Affidavit | | |
| 6-27-74 | DEFTS. Atty Hill) appearing for all 3 - Application for Reduction of bail denied - STEWART, J. | | |
| 7-18-74 | DUVALL - Filed CJA 20 Appointing Counsel Joseph Stone, 277 Bway, N.Y. 40 Wash. D.C. Stewart, J. | | |
| 8-7-74 | HENRY JONES - Filed C.J.A. copy #5 - appointing Benjamin Zelermeyer as counsel for defendant. - STEWART, J. | | |
| 8-7-74 | HENRY JONES - Filed C.J.A. copy #2 - original copy appointing Benjamin Zelermeyer as counsel, mailed to A.O. Washington, D.C. for payment. | | |
| 8-28-74 | All DEFTS. (atty. present) Applications for reduction of bail granted. Bail reduced to \$3,000.00 cash, special condition of bail be that bonds be co-signed by LEGAL WIFE and that all defts. report to U.S. Atty.'s office by phone once a week and provide AUSA and defts. atty. the address of where they are residing. - STEWART, J. | | |
| 8-30-74 | Filed Application for Review of Release conditions and reduction of bail. | | |
| 9-9-74 | Filed Govt. Notice of Readiness for trial | | |
| 9-16-74 | Defendants (3) Oral application to have atty. John C. Hill relieved as counsel - Grant Stewart, J. | | |
| 9-20-74 | Filed for Defts. Motion for Discovery and inspection | | |
| 9-25-74 | Filed ORDER that Lawrence Stern of 11 "cnroe Place, Bklyn, N.Y. is hereby added to the Panel of Attorneys for the sole purpose of representing the defendant RALPH H. PORTER At trial of the above case, and that a copy of this order shall be filed with the Clerk of the Court of Appeals, 2nd Circuit - EDELSTEIN, J. | | |
| 9-25-74 | DEFTS HENRY JONES, THOMAS DUVAL & RALPH PORTER - Motion for reduction of bail. Deft. Duval, bail set at \$10,000 unsecured to be cosigned by spouse. Defts. Porter and Jones - R.O.R. following conditions as to all three defts being (1) Defts. contact AUSA weekly. (2) that they inform AUSA before release from custody of their residences. (3) do not conduct business together without first advising the Court. (4) Defts. keep AUSA advised continually of whereabouts. Deft. Porter bail limits extended to include Philadelphia Pa., for purposes of trial and any other Court appearances only - STEWART, J. | | |

D. C. 110 Fed. Civil Docket Continuation

| DATE | PROCEEDINGS | F |
|----------|---|----|
| 9-26-74 | DUVAL - Filed P/R/B w/o security - sum of \$10,000. | Ju |
| 10-2-74 | DUVALL - Filed the following documents received from Mag. Raby - Docket Entry Sheet; Criminal Complaint; Magistrate's Warrant of Arrest; Disposition Sheet; Appointment of Counsel; Temporary Commitment. | |
| 10-2-74 | JONES - Filed the following documents received from Mag. Raby - Docket Entry Sheet; Criminal Complaint; Disposition Sheet; Notice of Appearance; Temporary Commitment | |
| 10-2-74 | PORTER - Filed the following documents received from Mag. Raby - Docket Entry Sheet; Criminal Complaint; Magistrate's Warrant of Arrest; Disposition Sheet; Appointment of Counsel; Temporary commitment | |
| 10-4-74 | Filed for Defts. Duval & Porter - Pre-Trial Motions | |
| 10-8-74 | JONES - Filed Remand with Marshal's return dtd 6/17/74 | |
| 10-8-74 | PORTER - Filed Remand with Marshal's return dtd 6/17/74 | |
| 10-8-74 | DUVALL - Filed Remand with Marshal's return dtd 6/17/74 | |
| 10-9-74 | Filed for Defts. Pre-Trial Motions | |
| 10-8-74 | JONES - Filed Discharge w/marshal's return date 9/26/74 | |
| 10-8-74 | DUVALL - Filed Remand w/marshal's return date 9/26/74 | |
| 10-8-74 | PORTER - Filed Discharge w/marshal's return 9/26/74 | |
| 11-6-74 | Filed Transcript of record of proceedings, dated 8-28-74 | |
| 11-20-74 | Filed Govt's Bill of Particulars | |
| 11-20-74 | Filed Affidavit in response to joint motion of Duvall, Porter, Jones. Defts. move for a Bill of Particulars, Discovery and Inspection and for disclosure of electronic surveillance, etc. | |
| 12-19-74 | Pre-trial conference held. No trial date set - STEWART, J. | |
| 12-17-74 | DUVALL - Filed CJA 21 Authorizing Mrs. Hanna Sulner, expert witness, 350 Park Av. N.Y., original mailed to AO Wash. D.C. for payment - STEWART, J. | |
| 12-17-74 | DUVALL - Filed CJA 20 Copy 5-Approving payment - METZNER, J. | |
| 01/10/75 | Filed Transcript of record of proceedings, dated 7-12-74 | |
| 04-04-75 | THOMAS DUVALL HENRY JONES--Bench warrants issued. Stewart, J. | |
| 04-02-75 | THOMAS DUVALL--Filed CJA form # 2 authorizing payment to Bernard Abrams of 362 Lexington Ave, NYC 10017 for expert services on 4/1/75. Original mailed to AO, Washington, DC for payment. | |
| 04-02-75 | THOMAS DUVALL--Filed CJA copy # 5 authorizing payment to Bernard Abrams for expert services. Original mailed to AO, Washington, DC for payment. Stewart, J. | |

| DATE | PROCEEDINGS | Date of Judgment |
|----------|---|------------------|
| 04-17-75 | For info. THOMAS DUVALL affd. in support of motion for suppression (entered in court as govt.'s exhibit 37, 1.D.) | |
| 05-05-75 | ALL DEFTS--Filed defts. request to charge. | |
| 03-21-75 | Various defts. motions hearing begun and to continue on March 26, 1975: Stewart, J. | |
| 03-26-75 | Hearing contd. Stewart, J. | |
| 03-27-75 | Court meets with defts. counsel and hearing is adj. to March 31, 1975. Stewart, J. | |
| 03-31-75 | Hearing contd. Stewart, J. | |
| 04-01-75 | DUVALL--Bench warrant ordered and stayed to 10am of 4/2/75. Stewart, J. | |
| 04-02-75 | DUVALL--Issuance of bench warrant is stayed and revoked. Hearing contd. Stewart, J. | |
| 04-03-75 | Hearing contd. Stewart, J. | |
| 04-04-75 | Hearing contd. DEFT. DUVALL--Bail previously set at \$10,000 PRB on 9/25/74 is <u>NOW INCREASED</u> to \$5,000 cash or surety. | |
| | JONES--bail previously set was ROR, <u>NOW INCREASED</u> to \$10,000 cash or surety. Defts. remanded in lieu of bail (remand to marshal's office this date) | |
| 04-07-75 | Hearing contd. DEFTS. JONES AND DUVALL motion for revocation of bail---GRANTED. Stewart, J. | |
| 04-08-75 | Hearing contd. | |
| 04-09-75 | Hearing contd. | |
| 04-10-75 | Hearing contd. ALL DEFTS---motion to DISMISS CTS. 28 THRU 34 inclusive IS GRANTED. Deft. PORTER moves to strike overt act #9,--MOTION GRANTED. | |
| 04-14-75 | Hearing contd. | |
| 04-15-75 | " " | |
| 04-16-75 | " " | |
| 04-17-75 | " " | |
| 04-18-75 | " and concluded. See official court reporters minutes for full by court. | |
| 04-21-75 | The Govts. application to <u>dismiss</u> cts. 2, 9 & 18 is GRANTED. Application to dismiss overt acts 6 and 8, there being not any objections by defts, is GRANTED. | |
| 04-21-75 | Jury trial begun. | |
| 04-22-75 | Jury trial contd. | |
| 04-23-75 | " " | |
| 04-24-75 | " " | |
| 04-25-75 | " " | |

(see Pg. 5)

ATTY.'S LISTING

D. C. 110 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS | |
|-----------------------|--|-------|
| 05-5-75 | DEFT. | ATTY. |
| THOMAS DUVALL | Jesse Berman 351 Bdwy, NYC 10013 431-4600 | |
| RALEIGH MC COY PORTER | Lawrence Stern 11 Monroe Place Bklyn, NY 11201 875-4304 | |
| HENRY JONES | O.T. Wells 377 Bdwy, NYC 10013 CA-6-2000 | |

D. C. 111 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS | D. C. 111 Rev. Civil Docket Continuation |
|----------|--|--|
| 04-19-75 | Jury trial contd. | |
| 04-20-75 | " | |
| 05-01-75 | " | |
| 05-02-75 | and concluded. Jury finds Deft. JONES, GUILTY on each of cts. 1 and 2. Deft. DUVALL, GUILTY on each of cts. 1, 3 thru 18 inclusive and 20 and 21. Deft. FORTIN, NOT GUILTY on each of cts. 1, 19, 20, 21, 22 and 23. Deft. porter, discharged. PSI ordered as to defts. DUVALL AND JONES. DUVALL--Bail contd. JONES--Bail of \$10,000 PRB, unsecured. Sentence date for Jones and Duvall adj. to June 16, 1975 at 9:30am. Both defts. Jones and Duvall to report to Marshal's office every Friday during regular business day. Stewart, J. | |
| 04-24-75 | HENRY JONES--Filed CJA copy #2 authorizing payment to Bernard Abrams of 363 Lexington Ave, NYC 10017 for expert services on 4/15/75. Original copy mailed to A. O., Washington, DC for payment. | |
| 04-24-75 | Filed CJA copy #5 as to deft. HENRY JONES authorizing payment to Bernard Abrams for expert services. Original mailed to Wash, DC (AO) for payment. Stewart, J. | |
| 05-14-75 | Filed government's affdvt. of T. Barry Kingham. | |
| 05-17-75 | HENRY JONES-- B/W vacated. Instruction to deft. by court on 5/2/75 re vac as directed on filed date. Stewart, J. | |
| 05-14-75 | JONES AND DUVALL--Govs. application to revoke bail as to both defts. and an issuance of a bench warrant--application granted. Stewart | |
| 05-14-75 | JONES AND DUVALL--Bench warrant issued. | |
| 05-21-75 | HENRY JONES--Filed personal recognizance bond without security in the amt. of \$11,000. | |
| 05-29-75 | HENRY JONES--Filed warrant of arrest with marshal's return (ordered vacated). | |
| 06-16-75 | HENRY JONES-- Filed affdvt. and notice of motion for an order permit the deft to be released on bail pending the determination of his appeal. ret. on June 17, 1975 at 10:30. | |
| 06-17-75 | HENRY JONES-- on deft. JONES--Deft. Jones's request for bail pending appeal granted. So ordered, Stewart, J. m/n | |
| 06-17-75 | JONES AND DUVALL-- (Att. Gen. Berman, present)--FILED JUDGMENT-- Deft. JONES, committed to the custody of the Atty. General for imprisonment for a period of ONE (1) YEAR, pursuant to Section 3651 of Title 18, U.S.C. Deft. DUVALL, pursuant to Section 3651 of Title 18, U.S.C. be placed in a jail for a period of ONE (1) YEAR as provided in the provisions of said title. Remainder of sentence be suspended for a period of TWO (2) YEARS. (over) | |

| DATE | PROCEEDINGS | Date Ord Judgment |
|----------|---|-------------------|
| | Deft. sentenced to 3 yrs. 10 mos. 15, etc. on this 15, 75 and 11 to 15, 75. 11 to 15, 75. Concurrently and concurrently with the sentence imposed on ct. 1. Probation to commence upon expiration of sentence. Deft. to surrender to the US Marshal in this courthouse on 11th service of sentence on June 16, 1975 by 5pm. Deft. is to be credited with time already served. Stewart, J. (copies issued) | |
| 06-16-75 | HENRY JONES (atty. J. P. McWilliams, present) -- FILED JUDGMENT -- the Deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of cts. 1 and 2, to run concurrently with each other. Deft. to surrender to the US Marshal in this courthouse by 5pm, this day, June 16, 1975. Stewart, J. (copies issued) | |
| 06-16-75 | HENRY JONES -- Bench warrant ordered. Stewart, J. | |
| 06-17-75 | THOMAS DUVALL -- Filed defts. notice of appeal to the USCA from the final judgment of June 16, 1975. (copies mailed to US Atty.) Defts. application to proceed on appeal in forma pauperis is granted. Stewart, J. | |
| 06-17-75 | HENRY JONES -- Filed defts. notice of appeal to the USCA from the final judgment of June 16, 1975. (copies mailed to US Atty.) Defts. application to proceed on appeal in forma pauperis is granted. Stewart, J. | |
| 06-06-75 | Filed CJA copy 2 -- original mailed to Adm. Office Wash. D.C. for payment to Lawrence Stern, Esq. (as trial Attorney) for deft. Porter | |
| 06-06-75 | PORTER -- Filed C.J.A. copy #5 -- appointing Lawrence Stern, 11 Monroe Place, Brooklyn, NY 11201 as Attorney to represent deft. at trial. -- Stewart, J. | |
| 06-06-75 | DUVALL -- Filed C.J.A. copy #5 -- appointing Jesse Berman, 351 B'way, NYC 10013 as Attorney to represent deft. at trial -- Stewart, J. | |
| 06-06-75 | DUVALL -- Filed C.J.A. copy #2 -- original mailed to Adm. Office, Wash. DC for payment to Jesse Berman. | |
| 06-06-75 | PORTER -- Filed CJA copy #5 - Authorization to pay Mrs. Hanna F. Sulner, Handwriting analyst, 350 Park Ave., NYC 10022 -- Stewart, J. | |
| 06-06-75 | PORTER -- Filed CJA copy #2 - original authorization mailed to Adm. office, Wash., DC. for payment to Hanna F. Sulner. | |
| 06-06-75 | JONES -- Filed CJA copy #5 - Authorization to pay Hanna F. Sulner, Handwriting expert, 35-30 81st St., Jackson Heights, NY 11372 -- Stewart, J. | |
| 06-06-75 | JONES -- Filed CJA copy #2 - mailed original authorization to pay Hanna F. Sulner to Adm. office, Wash., DC. | |
| 06-06-75 | DUVALL -- Filed CJA copy #5 - Authorizing payment to Ralph Addonizio, Licensed Investigator, 165 Sullivan St., NYC 10012 | |
| 06-06-75 | DUVALL -- Filed CJA copy #2 - mailed original copy authorizing payment to Ralph Addonizio to Adm. office, Wash., DC. | |
| 06-26-75 | Filed govt's reply affidavit: in response to the defendants' Additional Pre-Trial motion filed on March 19-75. | |
| 06-26-75 | Filed Affidavit of deft McCoy Porter re: probable cause, etc. dtd; Apr. 2-75 | |

D. C. 119 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS |
|-----------------|---|
| 06-26-75 | Filed defendants' Additional Pre-Trial Motions, dtd: March 19-75 |
| 06-26-75 | Filed Notice of Motion, by deft. Henry Jones, for order severing the offenses charged against the defts Porter and Duvall and granting deft Jones a separate trial, dtd: 16-75. |
| 06-26-75 | Filed defendants' Memorandum of Law, dtd: Sept 3-74. |
| 06-26-75 | Filed Govt's Requests for the Voir Dire. |
| 06-26-75 | Filed Govt's Memo. of Law: in opposition to the motion of the deft Duvall to suppress certain items seized from his person. |
| 06-26-75 | Filed Govt's Memo. of Law: in support of govt's position that none of the pre-trial photo indentifications of defts by govt witnesses was "so impermissible" |
| 06-26-75 | Filed Govt's Reply Memo. to defts' Additional pre-trial motions. |
| 06-26-75 | Filed Govt's Requests to Charge. |
| 06-26-75 | Filed Govt's Supplemental Request to Charge. |
| 06-26-75 | Filed Govt's Memo. of Law in support of an Application to proceed with pre-trial in the absence of the deft. Duvall. |
| 06-26-75 | Filed Govt's Memo. of law in opposition to defts' motion to suppress evidence. |
| 06-26-75 | Filed deft's (Porter) memo. of law re: motion to suppress evidence. |
| 06-27-75 | Filed Transcript of record of proceedings, dated <u>MARCH 21, 26-75</u> |
| 06-27-75 | Filed Transcript of record of proceedings, dated <u>APRIL 3, 4, 7, 8, 9 + 10-75</u> |
| 06-27-75 | Filed Transcript of record of proceedings, dated <u>APRIL 14, 15, 16, 17, 18 + 21-75</u> |
| 06-27-75 | Filed Transcript of record of proceedings, dated <u>APRIL 22, 23, 24, 25, 29 + 30-75</u> |
| 06-27-75 | Filed Transcript of record of proceedings, dated <u>MAY 1 + 2-75; MAY 14-75</u> |
| 06-17-75 | HENRY JONES--Bench warrant issued. |
| 07-01-75 | THOMAS DUVALL--Filed notice that the original record on appeal has been certified and transmitted to the USCA this date. |
| 06-20-75 | THOMAS DUVALL--Filed warrant of arrest (unexecuted as per AUSA). |
| 07-24-75 | THOMAS DUVALL Filed Transcript of record of proceedings, dated <u>JUNE 16-75</u> |
| 07-15-75 | H. JONES--Filed warrant for arrest with marshal's return. |
| 7/15/75 H Jones | Filed commitment & entered return, sent delivered to <u>Warden</u> <u>7:00 pm</u> <u>7/16/75</u> |

| DATE | PROCEEDINGS | Date Court Judgment |
|----------|---|---------------------|
| 07-31-75 | THOMAS DUVALL- Filed AMENDED JUDGMENT that pursuant to Rule 35, the Court now amends its judgment dated June 16, 1975 to read as follows: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count one (1), pursuant to section 3651 of Title 18, USC, as amended with provisions that defendant be placed in a Jail Type institution for a period of SIX (6) MONTHS, as provided in the aforesaid section. Execution of remainder of the sentence be suspended and defendant be placed on probation for a period of TWO (2) YEARS. Defendant sentenced on counts 3 thru 10, counts 11, 12 And 13 and counts 21 to TWO (2) YEARS Probation, to run concurrently and concurrent with order of probation imposed on count one(1). Probation to commence upon expiration of confinement. Defendant to surrender to the US Marshal in this Courthouse to begin service of sentence on June 18, 1975 by 5 P.M. Defendant is to be credited with time already served. -- Stewart, J. copies issued. | |
| 07-25-75 | Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA this date as to deft. THOMAS DUVALL. | |
| 08-13-73 | Jones - final commitment & entered return, Deft. delivered to: F.C.T. Standalone, Minn. on 7-21-75 | |
| 9/9/75 | H. Jones-- Filed defts. affdt. + notice of motion to reduce sentence, ret. on Sept. 25, 1975 at 10:30 A.M. | |
| 9-11-75 | HENRY JONES--Filed govts. affdt. of T. Barry Kingham re:opposition to defts. motion for reduction of sentence. | |
| 09-17-75 | HENRY JONES--Filed defts. letter dated Sept. 6, 1975 re: reduction of sentence. | |
| 09-23-75 | HENRY JONES--Filed memo end. on motion dated Sept. 9, 1975 for reduction of sentence--Motion is denied. Stewart, J. (m/n) | |
| 10-24-75 | HENRY JONES--Filed CJA copy #2 appointing Ozro T. Wells of 377 Bdwy, NYC 10013 as defts. atty. Orig. mailed to AO, Wash., DC for payment. | |
| 10-24-75 | HENRY JONES--Filed CJA copy #5 appointing Ozro Wells as defts. atty. Orig. mailed to AO, Wash., DC for payment. Stewart, J. | |

COURT'S CHARGE TO THE JURY
(Pp. 999-1037)

22

23

24

25

[Proceedings continued in open court with
all defendants and counsel present and the jury
box:]

THE COURT: Good morning, Mr. Gilliard, members

1
2 of the jury. There was a breakdown on the subway this
3 morning, which has caused a slight delay, and we all apologize

4 We have now come to that part of the case where
5 the evidence is in, the lawyers have presented their arguments,
6 and you are about to exercise your final role, that
7 is, to pass upon and decide the fact issues that are in this
8 case.

9 First, we all want to express our thanks to each
10 of you for your faithful devotion to your duties. It is
11 your responsibility now to reach a just verdict in the de-
12 termination of the charges against the defendants, and I
13 know that you will deliberate towards reaching a verdict
14 fairly, honestly and conscientiously.

15 I want to impress upon you that you are the
16 sole, the exclusive judges of the facts. You pass upon the
17 weight of the evidence; you resolve such conflicts as there
18 may be in the evidence; you draw such reasonable inferences
19 as may be warranted by the testimony or the exhibits in the
20 case.

21 My function at this point is to instruct you on
22 the law that is applicable to the case, and it is your sworn
23 duty to accept the law, not what the lawyers may have said
24 the law is, but as I say it to you in these instructions,
25 and to apply it to the facts as you find the facts to be.

1.2am

With respect to any fact matter, it is your recollection, and yours alone, that governs. Anything that counsel, either for the Government or for the defense, may have said with respect to matters in evidence, whether during the trial in the form of an argument, in argument, or in summation, is not to be substituted for your own recollection of the evidence. So, too, anything that I may have said during the trial, or may refer to during the course of these instructions as to any matters of evidence, is not to be taken in place of your own recollection.

As I have instructed you, the case must be decided upon the sworn testimony of the witnesses and such exhibits as have been received in evidence. You may not take into account or consider in any way any extraneous matters, such as anything outside this courtroom or in the jury room or the courthouse, or any other place. Only the evidence presented to you in this courtroom may be considered by you.

The fact that the Government is a party, that is, that the prosecution is brought in the name of the United States, entitles it to no greater consideration than that accorded to any other party to the litigation. By the same token, it is entitled to no less consideration.

There are certain general principles of law,

1 some of which I have stated to you, which I want to repeat.

2 First, the indictment is simply an accusation,
3 a charge. It is not evidence or proof of the guilt of any
4 of the defendants. It is merely a means utilized by the
5 Government to bring a defendant before this Court; it is
6 nothing more or less, and you will not give any weight to
7 the fact that an indictment has been returned against these
8 defendants.
9

10 All three defendants have pleaded not guilty.
11 Therefore, the Government has the burden of establishing
12 and proving beyond a reasonable doubt by competent evidence
13 the charges made against them. Whether this burden is
14 sustained does not depend upon the number of witnesses or
15 the quantity of the testimony, but, rather, on the nature
16 and quality of the testimony and other evidence. It is a
17 burden that never shifts, and remains upon the Government
18 throughout the entire trial.

19 A defendant does not have to prove his innocence.
20 On the contrary, a defendant is presumed to be innocent
21 of the accusations contained in the indictment, and the
22 Government must prove a defendant's guilt beyond a reasonable
23 doubt. This presumption of innocence was in the defendants'
24 favor when the trial began, it was present during the trial,
25 it is in the defendants' favor now even as I instruct you,

1
2 and remains in the defendants' favor during the course of
3 your deliberations in the jury room. It is removed only
4 if and when you are satisfied that the Government has
5 sustained its burden of proving beyond a reasonable doubt
6 the guilt of the defendants, all or each of them or any
7 of them. It is for this reason that a defendant does not
8 need to take the witness stand, and, in fact, none of the
9 defendants in this case have testified on their own behalf.
10 The Constitution and the laws of the United States provide
11 that in any criminal matter a defendant is under no obliga-
12 tion to come forward to testify or, indeed, to produce any
13 evidence, because the burden of proving a violation is
14 solely and exclusively on the prosecution.

15 So you are not to draw any inference from a
16 defendant's failure to do so, and, in fact, you must not
17 speculate upon it or consider it in any way in your delibera-
18 tions. A defendant has the absolute right not to make any
19 defense and to rely upon the Government's burden to prove
20 him guilty beyond a reasonable doubt.

21 Before I explain to you the indictment, I want
22 to instruct you on how you are to determine the guilt or
23 innocence of each of the three defendants named in the
24 indictment. Since there is more than one defendant in the
25 case, you must bear in mind at all times that guilt is

personal. The guilt or innocence of each of the defendants on trial before you must be determined separately solely on the evidence presented against each defendant or the lack of evidence. The case of each defendant stands or falls upon the proof or lack of proof of the charge against that defendant, and not against somebody else.

As I mentioned to you when the trial began, the charges in this case are contained in the indictment, which alleges that the defendants violated certain provisions of Federal law. The first count charges that all three defendants agreed or conspired to violate the law by passing forged United States Treasury checks and by possessing checks which had been stolen from the mail. The indictment also charges that the defendants did certain acts, called "Overt Acts" in furtherance of the agreement or conspiracy.

The charges contained in Counts 2 through 23 are called substantive counts. They charge specific violations of the law, each count citing an occasion on which a defendant, or one or more of the defendants, named in the indictment, allegedly passed a forged Treasury check or possessed stolen mail, or aided someone in the commission of such criminal activity.

As you know, the indictment names three defendants: Mr. Jones, Mr. Duvall and Mr. Porter. All three

1
2 are named as defendants in the conspiracy count, which
3 is Count 1. Mr. Jones alone is named in Count 2, which
4 alleges passing a forged Treasury check. Mr. Duvall alone
5 is named in Counts 3 through 10, which charge him with
6 possession of stolen mail, and Counts 11 through 18, which
7 charge him with passing forged checks. Now, I will give
8 you when you retire a copy of the indictment, so you will
9 have it in front of you. Mr. Porter alone is named in
10 Count 22, which charges him with possession of stolen mail,
11 and Counts 19 and 23, which charge Mr. Porter with passing
12 forged checks. Mr. Duvall and Mr. Porter are named together
13 in Counts 20 and 21, which charge possession of stolen mail
14 and passing a forged check, respectively. You will be
15 permitted to take a copy of the indictment into the jury
16 room with you during your deliberations, as I have told
17 you, so that the charges against each defendant will be
18 clear to you.

19 Again, I caution you that the guilt or innocence
20 of each of the defendants must be determined separately
21 with respect to him, solely on the evidence presented against
22 him, or the lack of it. In other words, the case against
23 each defendant stands or falls upon the proof or lack of
24 proof of the charges against him, and not against somebody
25 else. In this connection, in your deliberations you must

consider each count separately, and the guilt or innocence of a defendant charged in that count separately, based solely on the evidence against him.

The statute which deals with the crime of uttering a forged check provides -- and that is Section 459 of Title 18 --

"Whoever utters or publishes as true any... false, forged, altered or counterfeited writings, with intent to fraud the United States, knowing the same to be false, altered, forged or counterfeited..." commits a crime.

Now, in order to convict a defendant of this crime, of uttering a forged United States Treasury check, you must be satisfied beyond a reasonable doubt as to the count and the defendant you are considering:

First: That on or about the date charged in the indictment the defendant in question uttered or published a certain writing, that is, a United States Treasury check;

Second: That the check contained a false, forged, altered or counterfeited writing, namely, the signature of the payee;

Third: That the defendant in question knew that the check contained the false, forged, altered or counterfeited signature;

Fourth: That the defendant acted with intent

to defraud the United States; and,

Fifth: That the defendant acted wilfully and knowingly.

Going back to each of these elements, with respect to the first element you must be satisfied beyond a reasonable doubt that the defendant you are considering uttered or published the check in question. The terms "uttered or published as true" simply mean to pass or give to another person with the intent that the recipient believed that this writing is true.

The second element, that the check contained a false, forged, altered or counterfeited writing, in this case are the signatures of the payees on the checks, which the Government alleges are forged.

While a person without abandoning his real name may adopt or assume a name, he may use such assumed name to identify himself in the transaction of his business, but he must not use it to defraud others through a mistake of identity.

The writing of a payee's name as an endorsement on a check by a person other than the payee is not a forgery if it is done with the authority or permission of the payee.

In this connection, you have heard testimony that the payees' signatures were not theirs and that they

1 did not authorize anyone to sign their checks.

2
3 The third element which you must find beyond a
4 reasonable doubt before you may convict a defendant charged
5 with passing a forged Treasury check, is that he knew
6 that the check contained a forged endorsement.

7 Knowledge and intent exist in the mind. Since
8 it is not possible to look into a person's mind to see what
9 went on, the only way you have for arriving at a decision
10 on these questions is to take into consideration all the
11 facts and circumstances shown by the evidence, including
12 the exhibits, and to determine from all such facts and
13 circumstances whether the requisite knowledge and intent
14 were present at the time in question. Direct proof is
15 unnecessary. Knowledge and intent may be inferred from
16 all the surrounding circumstances.

17 The fourth element which you must find beyond
18 a reasonable doubt of the crime of uttering a forged
19 writing is that the defendant in question must have had an
20 intent to defraud the United States.

21 To convict you must find that the defendant
22 intended that, at some time in the future, some one or more
23 members of the public would be given the forged United
24 States Treasury check as payment for something, or would
25 be told that the check was true and genuine, or would deal

1 with the check in question in some other way under the
2 mistaken belief that it was true and genuine, without
3 knowing that it was forged. It is not necessary that the
4 defendant have had any particular persons in mind as the
5 ones who would be defrauded, or to whom the check in
6 question would be passed as true and genuine. The Govern-
7 ment does not have to prove that the defendant actually
8 caused anyone to suffer a pecuniary loss. It is only
9 necessary, in other words, that the Government prove that
10 the defendant intended that someone at sometime would be
11 defrauded by the United States Treasury checks set forth
12 in any given count.
13

14 Furthermore, intent to defraud the United States
15 does not mean the United States must have suffered any
16 pecuniary loss. It does mean, on the other hand, that the
17 administration of a governmental function must have been
18 impaired; here, the function is that of the United States
19 Treasury Department issuing checks as payments under certain
20 laws, including the Social Security laws, Income Tax laws,
21 Veterans' Administration laws, and so forth.
22

23 Finally, to determine the fifth element, whether
24 a defendant acted wilfully and knowingly, you must find
25 beyond a reasonable doubt that the defendant in question
knew what he was doing and that he did it deliberately and

1 voluntarily, as opposed to mistakenly or accidentally or
2 as a result of some coercion. Of course, it is not neces-
3 sary that the defendant knew he was violating any particular
4 law. Rather, it is sufficient if you are convinced beyond
5 a reasonable doubt that he was aware of the general,
6 unlawful nature of his act.
7

8 Now, as to the substantive crime of possession
9 of stolen mail, which is contained in Title 18, Section 1708,
10 that provides:

11 "Whoever buys, receives or conceals or unlawfully
12 has in his possession any letter, postal card, package,
13 bag, or mail or any other article contained therein, which
14 has been so stolen, taken, embezzled, or abstracted, as
15 herein described, knowing the same to have been stolen, taken
16 embezzled, or abstracted..." commits a crime.
17

18 In order to convict a defendant on a count
19 charging possession of stolen mail, you must find beyond a
20 reasonable doubt as to that count:

21 First: That a letter and its contents -- a
22 check -- were deposited in the mails;

23 Second: That the check was stolen from the
24 mails;

25 Third: That the defendant in question later had
the check in his possession;

Fourth: That at the time of his possession, the defendant knew the check was stolen. It is not necessary that the defendant knew that the check was stolen from the mails. It is only necessary that the defendant knew that the check was stolen; and,

Fifth: That the defendant's possession of the check was knowing and wilfull.

In reviewing those five elements, first, you must find beyond a reasonable doubt in order to convict a defendant of the possession of stolen mail, that a letter containing the check was deposited in and sent through the mails. In this connection, the Government has offered documents from various Treasury Department Disbursing Centers to establish the mailing of the checks charged in the indictment.

The second element which you must find beyond a reasonable doubt with respect to this offense is that the letter containing the check was stolen from the mails. In this regard, you may find that a letter which is properly mailed but never received by the addressee, which is later found in improper hands, has been stolen from the mails in the absence of any other explanation being offered. You may make the inference if you find that Treasury checks were mailed to the correct addresses, but not delivered to

those addresses, and later were found in the hands of another, that those checks were stolen from the mails.

The third element you must find beyond a reasonable doubt in order to convict is that the defendant in question received or possessed the contents of stolen mail. You may make such a finding if you conclude that a defendant possessed stolen mail, to wit, the letter or its contents, either physically or constructively, or that he aided and abetted another person who did.

Physical custody of the checks, obviously meets this requirement. In addition, one who does not have actual physical custody of the checks is said to possess them constructively if he exercises dominion or control over it. Such control may be demonstrated by the existence of a working relationship together with other evidence tending to demonstrate control between the person having such control and the persons with actual physical custody of the checks, or by the ability of such person to dictate the movement of the checks.

The fourth element which you must find beyond a reasonable doubt is that when the defendant had possession of a particular check or aided and abetted another person in such possession, the defendant knew it had been stolen. You need not find that he knew specifically that the check

1
2 in question had been stolen from the mail, but merely that
3 he knew it had been stolen.

4 Possession of recently stolen property, if not
5 satisfactorily explained, is ordinarily a circumstance from
6 which you may reasonably draw the inference and find in
7 light of the surrounding circumstances shown by the evidence
8 in this case that the person in possession knew the property
9 had been stolen.

10 However, you are never required to make this
11 inference. It is the exclusive province of the jury to
12 determine whether the facts and circumstances shown by the
13 evidence in this case warrant any inference which the law
14 permits the jury to draw from the possession of recently
15 stolen property.

16 The term "recently" is a relative term and has
17 no fixed meaning. Whether property may be considered
18 "recently stolen" depends upon the nature of the property,
19 and all the facts and circumstances shown by the evidence
20 in the case. The longer the period of time since the theft,
21 the more doubtful becomes the inference which may reasonably
22 be drawn from unexplained possession.

23 If you should find beyond a reasonable doubt
24 from the evidence in the case that the mail described in the
25 indictment was recently stolen and that the contents of

1 that mail, the Treasury checks, were in the possession of
2 the defendants, you would ordinarily be justified in drawing
3 from those facts the inferences that the contents were
4 possessed by the accused with knowledge that it was stolen
5 property, unless such possession is explained by facts
6 and circumstances in this case which are in some way con-
7 sistent with the defendant's innocence.
8

9 In considering whether possession of recently
10 stolen property has been satisfactorily explained, you are
11 reminded that in the exercise of constitutional rights a
12 defendant need not take the witness stand to testify. The
13 law never imposes upon a defendant in a criminal case the
14 burden of calling witnesses or testifying, or producing
15 any evidence. However, possession may be explained satis-
16 factorily through other circumstances, other evidence,
17 independent of any testimony of the defendant.
18

19 Finally, as to the fifth element, possession of
20 stolen mail, which you must find beyond a reasonable doubt,
21 that is, that a defendant acted wilfully and knowingly, as
22 I have explained to you, with respect to the crime of uttering
23 a forged United States Treasury check; you must find beyond
24 a reasonable doubt that the defendant was aware of the
25 general unlawful nature of his acts.

The crime of possession of stolen mail requires

1 proof of knowledge that the checks were stolen, and the
2 crime of passing forged Treasury checks requires proof of
3 knowledge that the checks were forged. In this connection
4 with this element of knowledge, you should consider all of
5 the facts and circumstances surrounding the transactions
6 in question.
7

8 Guilty knowledge cannot be demonstrated by
9 mere negligence or even foolishness on the part of a
10 defendant. However, the Government need not prove to a
11 certainty that the defendant in question had the knowledge
12 necessary for the commission of the offense, but only that
13 the defendant had such knowledge beyond a reasonable doubt.

14 Knowledge that checks are stolen or forged may
15 be inferred from circumstances that would convince a man
16 of ordinary intelligence that this is the fact. The element
17 of knowledge may be satisfied by proof beyond a reasonable
18 doubt that a defendant deliberately closed his eyes to what
19 otherwise would have been obvious to him.

20 Thus, if you find that a defendant acted with
21 reckless disregard of whether the checks were stolen or
22 forged and with a conscious purpose to avoid learning the
23 truth, the requirement of knowledge would be satisfied.

24 I have mentioned that the defendant who aids
25 and abets another to commit an offense may be guilty of

the offense. Section 2 of Title 18 states:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures his commission,..." commits a crime; and, "Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

In Counts 20 and 21 of the indictment, Mr. Duvall and Mr. Porter are charged not only as principals, that is, as the persons who actually passed or possessed the Peter Bucenko check, but as aiders and abettors as well. Accordingly, you may find either defendant guilty of the offense charged if you find beyond a reasonable doubt that one defendant committed the offense and that the other defendant aided and abetted him.

To determine whether one defendant aided and abetted in the commission of an offense you should ask yourselves these questions: Did he knowingly associate himself with the venture? Did he knowingly participate in it as something he wishes to bring about? Did he knowingly seek by his action to make it succeed? If he did, then he is an aider and abettor and is, therefore, guilty.

We turn now to the allegations contained in the

first count of the indictment, that is, that the defendants conspired to violate Section 495, that is, the crime of uttering forged United States checks, and Section 1708, that is, the crime of possession of stolen mail.

Count 1 charges a violation of Section 371 of Title 18, which provides that it is a crime for two or more persons to conspire to commit any offense against the United States in any manner or for any purpose if one or more such persons does any act to effect the object of the conspiracy.

The conspiracy charge is entirely separate and distinct from the charges made in the substantive counts. Congress has seen fit to make a conspiracy or concerted action to violate a Federal law a crime, entirely separate, distinct and different from the substantive law which may be the object of the conspiracy.

1.6 In order to find any defendant guilty of conspiracy as charged in the first count of the indictment, you must find each of the following elements beyond a reasonable doubt:

First: The existence of the conspiracy as charged in the indictment.

You will recall that you will have a copy of the indictment with you.

Second: That the defendant in question knowingly and wilfully joined the conspiracy; and

Third: That at least one of the conspirators knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place charged.

What is a conspiracy? A conspiracy is the combination or agreement of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants accomplished what it is alleged they conspired to do, is immaterial to the question of guilt or innocence.

A conspiracy has sometimes been called a partnership for criminal purposes in which every partner becomes the agent of every other partner. However, to establish a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the plans, the means by which the unlawful project is to

be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document or specific oral agreement.

When persons, in fact, undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Conspirators do not usually reduce their agreements to writing, nor do they publicly broadcast their plans. From its very nature, a conspiracy is almost invariably a secret in its origin and execution, rendering detection difficult.

Thus, it is sufficient if two or more persons, in any manner, through any contrivance, impliedly or tacitly come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In this connection, it is not necessary for the Government to prove the success of the conspiracy in order to show a violation, and as a conspiracy is basically the agreement to violate the law, it may exist even though the final objectives were never accomplished.

On the other hand, proof concerning the accomplishment of the objects of a conspiracy may be the most persuasive evidence of the existence of the conspiracy itself.

In determining whether there has been an unlawful

1 agreement, you may judge acts and conduct of the alleged
2 members of the conspiracy which are done to carry out an
3 apparent criminal purpose. Usually, the only evidence
4 available is that of disconnected acts on the part of the
5 alleged individual conspirators, which acts, however, when
6 taken together in connection with each other and with the
7 reasonable inferences flowing therefrom, show a conspiracy
8 or agreement to secure a particular result as satisfactorily
9 and conclusively as more direct proof.

11 If, upon such consideration of all the evidence,
12 direct or circumstantial, you find beyond a reasonable doubt
13 that the minds of the alleged conspirators met in an
14 understanding and that they agreed, as I have explained a
15 conspiratorial agreement to you, to work together in fur-
16 therance of the unlawful schemes alleged in the indictment,
17 then proof of the existence of a conspiracy is established.

18 If you find beyond a reasonable doubt that a
19 conspiracy existed, then you must consider whether the
20 defendant in question joined the conspiracy knowing its
21 unlawful purposes. The mere fact that a defendant may be
22 present at meetings, or may be seen with one of the con-
23 spirators, or may associate with one of them, or may have a
24 friendship with one of them, or may work with one of them,
25 is not in itself enough to make that individual a conspirator.

Before you can find that he is a member of a conspiracy, you must find that he deliberately and intentionally joined the conspiracy with knowledge of its unlawful purpose, thereby becoming a party to the unlawful agreement.

When I say "joined the conspiracy", I don't mean that the defendant had to file an application for membership. Before one can be found to be a conspirator, however, he must knowingly join the venture; he must promote it or have a stake in its outcome; he must be in on the scheme, in on the plan.

The key to this element of the crime is the defendant's knowledge and intent. Now, in determining intent of a defendant, it is obviously impossible to look into his mind. However, intent and knowledge may be inferred from a defendant's conduct, from his acts, from his statements and all the surrounding circumstances.

In determining whether a defendant was a member of the conspiracy, you must determine whether he participated with the knowledge of at least one of its unlawful purposes. Knowledge may be a matter of inference from the facts proved.

It is not necessary that one be fully informed as to the details and scope of the conspiracy, or be acquainted with all of the conspirators, in order to justify

1
2 an inference of knowledge. All of the conspirators need
3 not be acquainted with each other; they may not have
4 previously associated together. One of the defendants
5 may know only one other member of the conspiracy, but if
6 he enters into an unlawful agreement with that other member
7 of the conspiracy, he becomes a party thereto. The question
8 is: Did a defendant join the others with awareness of
9 at least some of the basic purposes and aims of the con-
10 spiracy?

11 I want to caution you that mere association
12 with one or more of the conspirators does not make one a
13 member of the conspiracy. Nor is knowledge without par-
14 ticipation sufficient. What is necessary is that a defendant
15 join the conspiracy with knowledge of at least some of the
16 purposes of the conspiracy and with intent to aid in the
17 accomplishment of those unlawful ends.

18 If you find the conspiracy to exist and that
19 the defendant in question knowingly participated in it, the
20 extent of his participation has no bearing on his guilt or
21 innocence. The guilt of a conspirator is not measured by
22 the extent or the duration of his participation. Even if
23 he participated in it to a degree more limited than that of
24 his co-conspirators, he is equally culpable as long as he
25 was, in fact, a conspirator. The reason for this rule is

1 that when people enter into a conspiracy to accomplish an
2 unlawful end, they become agents for one another in carrying
3 out the conspiracy. Hence, the acts or declarations of
4 one person made during and in furtherance of the conspiracy
5 are deemed to be the acts of all, and all are responsible
6 for such acts.
7

8 It is important to note that this principle
9 applies only to acts done and declarations made during the
10 continuance of the conspiracy and in furtherance thereof.

11 Thus, if you find in accordance with these
12 instructions that a conspiracy existed and that the defendant
13 participated in it along with others, then you may consider
14 the acts performed and statements made by others to carry
15 out the conspiracy as evidence against the defendant, even
16 though he himself may not have been present nor had any
17 knowledge of such acts or statements.

18 In addition, it is not required that a person
19 be a member of the conspiracy from its very start. He
20 may join it at any point during its progress and be held
21 responsible for all that has been done before he joined
22 and all that may be done thereafter during its existence
23 and while he remains a member.

24 You will recall that at certain portions of the
25 trial I instructed you that you could consider certain

evidence "subject to connectinn." You may consider evidence of acts done and statements and declarations made in furtherance of the conspiracy by one defendant as evidence against another defendant, even though such acts or declarations were made in the absence and without the knowledge of the other defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

If it appears from the evidence beyond a reasonable doubt that the conspiracy alleged in the indictment was knowingly and wilfully performed and that a defendant knowingly and wilfully became a member of that conspiracy with knowledge of its unlawful purposes as charged, then you must consider whether the Government has established beyond a reasonable doubt the third element of the crime. That is, whether at least one of the overt acts as charged in the indictment was committed by at least one of the conspirators in furtherance of the object of the conspiracy.

The reason the law of conspiracy requires an

overt act is because a person might agree to commit a crime against the United States and then change his mind. In such a case there is no crime. Therefore, before there can be a crime one or more of the conspirators must have taken one step or performed at least one single act which moved directly toward carrying out the unlawful intent to commit the crime. An overt act is any step, action or conduct which is taken to achieve, accomplish or further the objective of the conspiracy. The overt act need be neither a criminal act nor the very crime which is the object of the conspiracy.

The Government has alleged certain overt acts in the Southern District of New York. The Government must prove to you beyond a reasonable doubt that at least one of these acts was committed by one or more of the conspirators and that the act was done in furtherance of the conspiracy. You need not find that all of the overt acts were committed. One overt act committed in this District by any member of the conspiracy, whether or not such a member is a defendant here, is sufficient.

Further, it is sufficient if the dates alleged in the overt acts in the indictment are substantially similar, within a few weeks of the dates mentioned in the testimony. The same is true as to the places mentioned in

1
2 the overt acts. They must be substantially similar. There
3 is no requirement that they be exactly those dates or places
4 alleged.

5 The substantive counts of the indictment and
6 the overt acts of the conspiracy count charge that the acts
7 involved occurred on or about certain dates. It does not
8 matter if a specific transaction is alleged to have occurred
9 on or about a certain date and the testimony indicates that,
10 in fact, if you find that it did occur, it was on another
11 date. The law only requires a substantial similarity
12 between the dates alleged in the indictment and the dates
13 established by the testimony.

14 There has been testimony that the defendant
15 Duvall may have used the name Benjamin Young in negotiating
16 Treasury checks. If you find that he knowingly used the
17 false name in order to conceal his true identity and avoid
18 identification, that is a fact from which you may, but need
19 not infer consciousness of guilt on his part.

20 There has been evidence in this case that after
21 his arrest, Thomas Duvall made certain statements to Secret
22 Service agents and to Mr. Carey, an Assistant United States
23 Attorney. The Government claims that some of those state-
24 ments are admissions and that some are false exculpatory
25 statements, a term which I will explain in a moment.

1
2 I charge you that you may not consider that
3 statement unless you first find that Mr. Duvall made the
4 statement voluntarily. By "voluntarily", I mean that you
5 must decide that the statement was not the product of any
6 threats or coercion. If you find that it was made volun-
7 tarily, then you may consider Mr. Duvall's pre-trial
8 statements and give them such weight as you determine should
9 be given under the circumstances under which they were made.

1.8
10 Among the circumstances which you should con-
11 sider are whether the defendant knew he was not obligated
12 to make a statement, that any statements he made could be
13 used against him in court, and that he was entitled to the
14 assistance of counsel before making any statement and during
15 any questioning, and that if he could not afford a lawyer
16 for that purpose, one would be appointed for him. You
17 should also consider the age, training, education, occupation,
18 physical and mental condition of the defendant, and his
19 treatment while in custody or while being interviewed.

20 After consideration of all of the circumstances
21 surrounding Mr. Duvall's pre-trial statements, including
22 but not limited to the matters which I have just mentioned,
23 you may determine what weight, if any, should be given to
24 the statements as evidence against him.

25 A false exculpatory statement is a statement

1 later shown to be false by which a person attempts to
2 exonerate himself. If you find that when questioned by
3 Agent Gniazdowski and Mr. Carey the defendant Thomas Duvall
4 gave a false statement in an attempt to exonerate himself,
5 you may consider such a false statement as circumstantial
6 evidence from which consciousness of guilt or criminal
7 intent may be inferred. A jury could reasonably infer that
8 an innocent person does not ordinarily find it necessary to
9 invent or fabricate an explanation or statement tending
10 to establish his innocence. Whether or not the evidence of
11 Mr. Duvall's statements points to a consciousness of guilt,
12 and the significance, if any, to be attached to any such
13 evidence, are matters for your determination.

14 I have used in my instructions the phrase,
15 "beyond a reasonable doubt." What is a reasonable doubt?
16 A reasonable doubt is one which appeals to your reason,
17 to your judgment, your common sense, and your experience.
18 It is not impulse, whim or speculation. It is not an
19 excuse to avoid the performance of an unpleasant duty, nor
20 sympathy for a defendant. On the contrary, it is a doubt
21 which a reasonable person has after carefully weighing all
22 the evidence.

23 Of course, a reasonable doubt may arise not only
24 from the evidence presented, but also from the lack of
25

evidence, since the burden is always upon the prosecution to prove the accused guilty of every essential element of the crime charged beyond a reasonable doubt. The defendant has a right to rely upon the failure of the prosecution to establish every element beyond a reasonable doubt.

If after a fair and impartial consideration of all the evidence in the case, or the lack of it, you can honestly say that you have such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if after a fair and impartial consideration of all the evidence you can honestly say that you are convinced of the guilt of a defendant with such conviction that you would be willing to act upon it in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt, and in that circumstance it is your duty to convict.

Beyond a reasonable doubt does not mean beyond all possible doubt. If that were the rule, few persons, however guilty they might be, would be convicted. Consequently, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt. Of course, it follows that if after considering

1 all the evidence in the case or the lack of evidence you
2 find the proof with respect to any defendant is as con-
3 sistent with innocence as with guilt, or that it is only
4 less likely that that defendant is innocent than guilty,
5 that defendant should be acquitted.
6

7 If you find that the law has not been violated
8 you should not hesitate for any reason to find a verdict
9 of not guilty. But, on the other hand, if you should find
10 that the law has been violated as charged, you should not
11 hesitate because of sympathy or any other reason to render
12 a verdict of guilty.

13 I want to explain that there are two types of
14 evidence which a jury may properly rely in deciding the
15 guilt or innocence of an accused. One is direct evidence,
16 such as of a witness relating what he heard or saw, something
17 he knows through his own knowledge which bears directly
18 on a fact issue in the case. For example, testimony by a
19 witness that he saw a defendant in possession of an object
20 is direct evidence which, if believed by the jury, establishes
21 the fact that the defendant was in possession of the object.
22 The other type of evidence is circumstantial evidence,
23 which is proof of a fact or circumstance from which one may
24 infer connected facts which reasonably follow in man's
25 common experience.

1
2 So while you are considering the evidence
3 presented, you are permitted to draw from the facts which
4 you find to have been proven, such reasonable inferences
5 as seem justified in the light of your experience. But,
6 here again, let me remind you that whether based on direct
7 or circumstantial evidence, or the logical, reasonable
8 inferences drawn from such evidence, you must be satisfied
9 of the guilt of a defendant beyond a reasonable doubt.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 Circumstantial evidence is that which tends
3 to prove a disputed fact through other facts. Here is a
4 very simple example. If you look out a window and see
5 it is raining, then your statement that you see rain coming
6 down is direct evidence that it is raining. But if instead
7 of looking out the window you see a succession of people
8 coming inside, each with raincoats, rubbers, umbrellas,
9 and each one dripping wet, then your statement as to that
10 observation is the circumstantial evidence of the fact that
11 it is raining.

12 Circumstantial evidence is of no less value than
13 direct evidence, for as a general rule the law makes no
14 distinction between direct and circumstantial evidence,
15 but simply requires that before convicting a defendant the
16 jury must be satisfied of the defendant's guilt beyond a
17 reasonable doubt from all the evidence in the case.

18 In addition, there are times when different
19 inferences may be drawn from a certain set of facts. An
20 inference is a deduction or a conclusion which the jury is
21 permitted to draw from facts which have been established
22 by either direct or circumstantial evidence in the case.
23 But an inference is not drawn by speculation or guesswork,
24 but, rather, must be arrived at by an exercise of your
25 reason and common sense.

You are the sole judges of the credibility or the truthfulness of each witness. In weighing the testimony of each witness you should consider his relationship to the Government, the extent of the witness' interest in the outcome of the case, the manner of testifying, his appearance and conduct while on the stand, his intelligence, the strength or weakness of his recollection and the extent to which he has been corroborated or contradicted, if at all, by the other credible witnesses.

The ultimate question for you to decide is did the witness tell the truth, and to this end you are to use your everyday common sense. If you find that a witness has deliberately testified falsely to any material fact you may disregard all of his testimony or you may accept that part of his testimony which you believe is truthful or which you find to be corroborated or supported by other evidence in the case.

While the truthfulness and believability of every witness is for you and for each of you to decide, the fact that some witnesses who have come before you were police officers or federal agents does not entitle their testimony to any greater or a lesser believability simply because of their official status. Whether you do or do not believe any witness must depend upon how truthful you judge that

1 rge 2

2 witness to be after you have heard the witness' testimony
3 and formed your own conclusions as to his believability.

4 The defendant, Mr. Jones, has introduced evi-
5 dence of his reputation for truthfulness and honesty in
6 his community through a character witness in order to show
7 that it is improbable that he committed the crimes charged
8 here. Under certain circumstances character evidence may
9 raise reasonable doubt as to guilt.

10 During the cross examination of this witness the
11 witness was asked whether he had heard about an arrest and
12 an indictment. Those questions were permitted solely for
13 the purpose of determining the witness' familiarity with
14 the defendant. Therefore, the witness' answers may be con-
15 sidered by you solely for that limited purpose. It has no
16 bearing on the guilt or innocence of Mr. Jones or the guilt
17 or innocence of Mr. Duvall and Mr. Porter.

18 During the trial you have heard the testimony of
19 two expert witnesses, a fingerprint identification expert
20 and an expert document examiner. You may reject an expert's
21 opinion if you find the facts to be different from those
22 which form the basis for his opinion. You may also reject
23 his opinion if after a careful consideration of all the
24 evidence in the case, expert and other, you disagree with
25 the finding.

In other words, you are not required to accept the expert's opinion to the exclusion of the facts and circumstances disclosed by other testimony. Such an opinion is subject to the same rules concerning reliability and credibility as the testimony of any other witness. It is given to assist you in reaching the proper conclusion and it is entitled to such weight as you find the experts qualifications warrant. The expert testimony may be considered by you, but it is not controlling upon your judgment.

Now, as I have mentioned to you, anything that counsel, either for the Government or the defendants, may have said with respect to matters of evidence during the trial or at any other time, in argument or summation, is not evidence, also anything which I may have said at any time is not evidence. The case is to be decided by you solely on the evidence and solely by means of such testimony as was heard by you and such exhibits as have been received in evidence.

From time to time during the trial the parties have raised objections to some of the testimony or other evidence. As I told you at the start of the trial they would. I want to remind you it is the duty of a lawyer to object to evidence which he believes may not properly be offered and you should not be prejudiced in any way against

1 rge 4

2 the lawyer who makes the objections or against the party
3 he represents. In addition, my actions during the trial in
4 ruling on motions or objections are not to be taken by you
5 as any indication of the guilt or innocence of the defend-
6 ant. They are matters of law with which you have no con-
7 cern.

8 Under your oath as jurors, and as I also told
9 you at the outset, you cannot allow a consideration of the
10 punishment which may be inflicted upon a defendant if con-
11 victed, to influence your verdict in any way or to enter
12 into your deliberations. The duty of imposing sentence
13 rests exclusively with me. Your function is to weigh the
14 evidence and determine guilt or innocence solely on the
15 basis of the evidence and the law as I have given it to you
16 You must not be influenced by any assumption, conjecture
17 or sympathy or any inference not warranted by the facts.

18 The purpose of your deliberations is to exchange
19 views with your fellow jurors, to discuss and consider the
20 evidence, to listen to each other's arguments, to present
21 your own views, to reach an unanimous verdict as to each
22 of the counts based solely and wholly on the evidence if
23 you can do so without violence to your own individual judg-
24 ment. Each of you must decide the case for yourself, but
25 do so only after an impartial consideration of the evidence

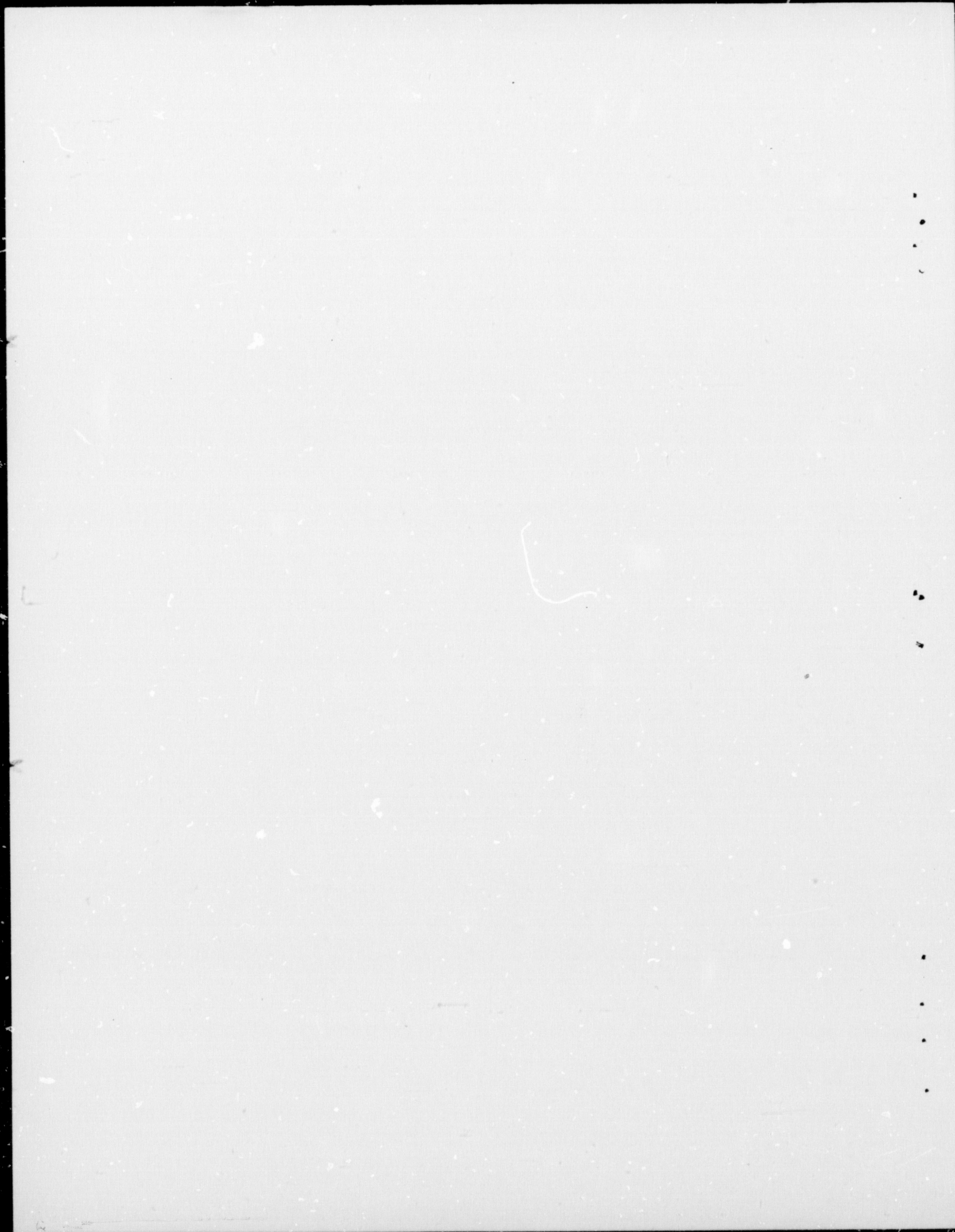
1 rge 5

2 in the case, with your fellow jurors. Don't hesitate to
3 reexamine your views and to change your opinion when after
4 a discussion it appears to be in error, but if after care-
5 fully considering all the evidence in the case and the argu-
6 ments of your fellow jurors you hold a conscientious view
7 which differs from the others you are not to yield your
8 views simply because you are outnumbered.

9 If in the course of your deliberations you need
10 to examine any of the exhibits or desire any of the evidence
11 to be read, or if there is anything else which you need from
12 me, please send me, Mr. Gilliard, through the Marshall, a
13 note asking for whatever you want. In communicating with
14 me I admonish you, however, do not indicate in any communi-
15 cation which you send to me, how your vote might stand. As
16 I have indicated, a verdict of either not guilty or guilty
17 must be unanimous on each count and you must render a
18 verdict with respect to each of the defendants.

19 Your oath sums up your duty, and that is without
20 fear or favor to anyone you will truly try the issues between
21 between these defendants and the Government, based solely
22 upon the evidence and the Court's instructions as to the
23 law. It is important to the Government; it is important to
24 the defendants.

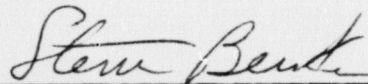
25 All right, counsel.



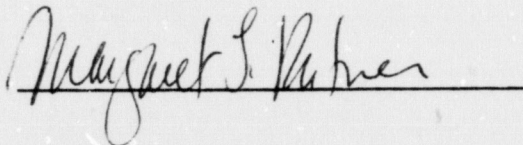
AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

STEVEN BERNSTEIN, being duly sworn, deposes and says that on the 24th day of October, 1975, I served the within Appellants' Joint Appendix upon O.T. Wells, Esq. and Paul J. Curran, United States Attorney, by delivering true copies of same to them at 377 Broadway, New York, New York 10013 and One St. Andrews Plaza, New York, New York 10007, the addresses respectively designated by said attorneys for that purpose.


STEVEN BERNSTEIN

Sworn to before his 24th
day of October, 1975.



MARGARET L. RATNER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3211470
Qualified in New York County
Commission Expires March 30, 1977

Received 10/24/75
from [unclear] Hughes for
Geo. J. Wells

